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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/073,877 05/07/98 FORD

L LN.010

EXAMINER

QM12/0820

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5809 WARD COURT
VIRGINIA BEACH VA 23455

HIRSCH, P

ART UNIT

PAPER NUMBER

3732

DATE MAILED:

08/20/99

#5

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/073,877

Applicant(s)
Wolfenbarger et al

Examiner
Paul Hirsch

Group Art Unit
3732



☒ Responsive to communication(s) filed on May 7, 1998

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-26 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-26 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

Art Unit: 3732

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

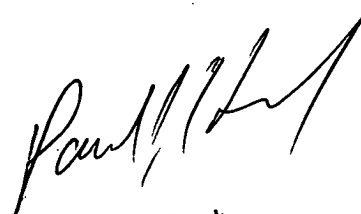
2. Claims 1-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Senter et al in view of Heggeness et al, Wagner et al, Cottle, Gross et al and McKay. While teaches an implant of included protrusions it would be obvious in view of both the teachings of Senter et al and Heggeness et al of known allografts to form a prosthesis such as taught by Senter et al with the known and conventional shapes of spinal prosthesis. Heggeness et al teaches (col. 1, lines 43-57 for example) that allografts can be produced in various sizes and shapes. The inclusion of various shaped protrusions such as ridges, pyramids, points of known construction in bone prosthesis such as taught by Wagner et al, Cottle, McKay and Gross et al is considered a matter of obvious design choice to one of ordinary skill in the art as well as specific dimensioning. The method

Art Unit: 3732

steps of claims 3-4 and 24 (milling is a known method of article manufacture), would be obvious in view of the references applied.

3. G-M are cited as further teachings including prosthesis design.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Primary Examiner Paul Hirsch whose telephone number is (703) 308-2697.



Paul J. Hirsch
Primary Examiner

pjh

August 16, 1999